

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EARL J. BRAXTON

Appeal 2007-1421
Application 10/034,720
Technology Center 3700

Decided: April 29, 2008

Before DONALD E. ADAMS, ERIC GRIMES, and RICHARD M.
LEBOVITZ, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant has requested rehearing of the Decision entered December 19, 2007. The Decision affirmed all rejections of record. The request for rehearing is denied.

DISCUSSION

Intended use:

Statements of intended use often appear in the claim's preamble, although not necessarily. *In re Stencel*, 828 F.2d 751, 754 (Fed. Cir. 1987). Accordingly, we are not persuaded by Appellant's assertion that "intended use" language is exclusively limited to the preamble of a claim (Request 3).

Nevertheless, Appellant asserts that

for the Board to conclude that [the phrase] "for transporting said portable toilet shelter" is directed at the intended use of the folded shelter and therefore does not constitute a limitation on the claimed shelter is a clear legal error in that all claim terms are presumed to have meaning in a claim.

(Req. Reh'g. 3-4.)

As the Decision explains:

Claim 1 is drawn to a portable toilet shelter. This shelter comprises (1) a base and (2) a loop enclosure (e.g. walls) circumscribing the base. According to claim 1 the loop enclosure comprises

- i. opposed planar end walls which have longitudinally oriented opposed side edges;
- ii. opposed planar side walls which have longitudinally oriented opposed side edges and are located between the end walls; and
- iii. means (e.g. a hinge) for movably connecting said longitudinally oriented opposed side edges of said planar side walls to said longitudinally oriented opposed side edges of said end walls such that said opposed planar end walls and said opposed planar side walls complete said loop enclosure.

(Decision 3-4.) The foregoing limitations define the structure of the claimed shelter. As the Decision explains, "the claim reads on a loop enclosure in any state" (Decision 4). Nevertheless, we appreciate that claim 1 includes a

functional description of the shelter when it is in (1) a partially disassembled folded state and (2) a partially erect state. However, as the Decision explains “the claim does not require that . . . [the shelter] be in the partially-disassembled state; only that it be capable of being folded into a partially-disassembled state”, e.g., the state in which Appellant intends to transport the shelter (Decision 9).

On this point the Decision explains:

As appellant correctly points out (Brief, page 8), Dahl explains (column 4, lines 13-38) that the loop enclosure is further collapsed into a stack of eight wall sections. In our opinion this does not detract from Dahl’s first step, wherein the “loop enclosure” takes on a stackable folded planar state having a thickness of one each of the planar end walls and one each of the planar side walls. We recognize, as does appellant, that “Dahl does not teach that the toilet shelter is transportable in this specific state.” Reply Brief, page 2. We also recognize that obviousness is determined in terms of the level of skill of a person having ordinary skill in the art at the time the invention was made. 35 U.S.C. § 103; Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). We presume that a person having ordinary skill would exercise common sense and sound judgment. In re Sovish, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985). Accordingly, it is our opinion that a person of ordinary skill in the art would recognize that the loop enclosure could be maintained, stacked, or transported via van or truck in the folded state illustrated in Dahl’s figure 2. In addition, we note that appellant’s claim 1 refers to a shelter comprising the recited attributes, which does not exclude further collapsing the loop enclosure into a stack of eight wall sections as taught by Dahl.

(Decision 8-9.) Stated differently, the Decision explains that the combination of prior art relied upon by the Examiner meets the requirements of a partially-disassembled and partially-assembled shelter according to

claim 1 (*see e.g.*, Decision 6). As set forth in *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007), it is proper to “take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *See also id.* at 1742 (“A person of ordinary skill is also a person of ordinary creativity, not an automaton.”). Accordingly, we disagree with Appellant’s assertion that we did not fully address the phrase “for transporting said portable toilet shelter” as it appears in claim 1.

We also disagree with Appellant’s assertions regarding the loading of a shelter into an automobile (Req. Reh’g. 6). In this regard, we would note that a person of ordinary skill in the art would recognize that vans and trucks are extremely efficient vehicles for transporting materials of various sizes.

What Appellant has failed to address, is why the combination of prior art relied upon by the Examiner fails to teach a shelter that meets all of the limitations set forth in claim 1. On reflection, we find no point of law or fact that we have misapprehended. Accordingly, we are not persuaded by Appellant’s argument.

The physical state of the claimed shelter:

“Appellant does not understand how the Board can possibly make this finding” that “the claim does not require the shelter to be in a partially disassembled or partially erect state” (Req. Reh’g. 7). According to Appellant “the clear unambiguous language in line 15 of independent Claim 1 . . . recites the specific limitation in the body of the claim” (Req. Reh’g. 7-8).

Claim 1 provides for two alternative physical states for the claimed shelter. First, the “portable toilet shelter being in a partially disassembled

folded state *when*” certain events transpire (Claim 1 (emphasis added)). Second, the “portable toilet shelter being in a partially erected state *when*” certain events transpire (*id.*). Claim 1 does not exclude the shelter from being in a completely disassembled state or a completely assembled/erect state. Therefore, as the Decision explains “the claim does not require the shelter to be in a partially disassembled or partially erect state” (Decision 4). The claim simply defines the physical state of the shelter during the course of assembly/disassembly steps. Appellant has not provided an alternative meaning of the claim limitation, other than to assert that Dahl does not meet it. Appellant has not provided persuasive argument or evidence to explain why the shelter taught by the combination of references relied upon by the Examiner would not meet the requirements of claim 1. Accordingly, we are not persuaded by Appellant’s assertions to the contrary.

Latch 60:

Dahl teaches that

[i]n these instances in which the two wall sections of a wall of the enclosure are not directly hinged together *it is desirable* to provide suitable latch means for releasably interconnecting the wall sections in such manner as to maintain them in co-planar alignment. Thus, as shown in Figure 5, a suitable latch means **60** releasably connects the wall section **30** with the wall section **32** and a second similar latch means **60** releasably connects the wall section **26** with the wall section **28**.

(Dahl, col. 3, ll. 50-58 (emphasis added); *see also* Decision 9-10.)

Appellant contests this express disclosure in Dahl. According to Appellant Dahl’s latch 60 “is not only used on an alternative embodiment as

alleged (and apparently not shown) by the Board but indeed on the preferred embodiment as clearly shown in Figures 1-6” (Req. Reh’g. 9).

Figures 5 and 6 show “the latch 60 used on the two walls having web 55 therebetween” (Req. Reh’g. 8). We are not persuaded.

For the purposes of this Request we will assume that Appellant is correct in that Dahl teaches three embodiments: (1) a structure wherein the wall structures are directly hinged together without a latch 60; (2) a structure that *desirably* utilizes a latch 60 because the wall structures are not directly hinged together; and (3) a structure that utilizes both latch 60 and wall structures that are directly hinged together. Appellant has not identified, and we do not find, a reference to latch 60 in figures 1-4 of Dahl. Thus, Dahl teaches and expressly illustrates a shelter that does not require latch 60. Further, even if the wall structures are not directly hinged together, Dahl teaches that a latch 60 is *desirable* not required. Accordingly, Appellant has failed to identify an error in our finding that Appellant’s arguments relating to latch 60 are not persuasive (Decision 9).

For the foregoing reasons we are not persuaded by Appellant’s arguments.

CONCLUSION

Appellant has not shown that we misapprehended or overlooked any points in the Decision. The required for rehearing is denied.

Appeal 2007-1421
Application 10/034,720

REHEARING DENIED

Ssc:

VAN OPHEM & VANOPHEM, PC
REMY J VANOPHEM, PC
51543 VAN DYKE
SHELBY TOWNSHIP, MI 48316-4447